



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

February 22, 1999

Mr. Bruce Halstead
US Fish and Wildlife Service
1125 16th Street, Room 209
Arcata, CA. 95521-5582

Dear Mr. Halstead:

The Environmental Protection Agency (EPA) has reviewed the Final Environmental Impact Statement (FEIS) and Habitat Conservation Plan/Sustained Yield Plan (HCP/SYP) for the project entitled **Headwaters Forest Acquisition and the PALCO Sustained Yield Plan and Habitat Conservation Plan, California**. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), Section 309 of the Clean Air Act, and the Clean Water Act (CWA). Our review and comments are also presented in the spirit of our role as a cooperating agency providing technical assistance and advice in areas within our jurisdiction.

The EIS evaluates Federal and State actions associated with the September 28, 1996 Headwaters Agreement (Agreement) and subsequent agreements which include:

- (1) Acquisition by the United States and the State of California from Pacific Lumber Company (PALCO) of the approximately 4,500-acre Headwaters Forest, which includes 2,700 acres of old-growth redwood trees, and the 1,125-acre Elk Head Springs Forest, of which there are approximately 425 acres of old-growth redwood trees;
- (2) Funding by the United States and the State of California of the purchase of approximately 9,600 acres of Elk River Timber Company property, about 7,755 acres of which will be transferred to PALCO as part of the consideration to PALCO for the Headwaters and Elk Head Springs Forests, and 1,845 acres of which will be transferred to the United States and the State of California and preserved as a buffer for the Headwaters Forest. The combined area of the acquired Headwaters and Elk Head Springs Forests, plus the Elk River property to be transferred to the United States and the State of California, is approximately 7,500 acres;
- (3) Payment by the United States and the State of California of up to \$380 million to PALCO and the Elk River Timber Company as payment for the Headwaters Forest, Elk Head Springs Forest and the Elk River Property;
- (4) Issuance by US Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) of federal incidental take permits covering take of threatened and endangered species on PALCO's timberlands based on a habitat conservation plan

- (HCP) that meets the requirements of the federal Endangered Species Act (ESA) and other applicable laws and regulations;
- (5) Approval by California Department of Forestry and Fire Protection (CDF) of PALCO's Sustained Yield Plan (SYP), including measures and plans addressing state-listed and federally listed species;
- (6) Issuance by California Department of Fish and Game (CDFG) of a state incidental take permit that meets the requirements of the California ESA and other applicable laws and regulations; and
- (7) Execution by CDFG of a state streambed alteration agreement pursuant to Fish and Game Code Section 1600 to 1607.

The Lead Federal Agency is the US Fish and Wildlife Service (FWS) and Lead State Agency the California Department of Forestry and Fire Protection (CDF). Cooperating Agencies are the National Marine Fisheries Service (NMFS), Bureau of Land Management (BLM), Environmental Protection Agency (EPA), California State Department of Fish and Game (CDFG), and California Regional Water Quality Control Board - North Coast Region (NRWQCB).

Federal and State appropriations have been approved for purchase of the Headwaters Reserve. These appropriations expire as of March 1, 1999. The EIS evaluates four alternatives: Alternative 1- No Action, Alternative 2 - Lead agencies' modified PALCO proposed HCP/SYP (proposed action), Alternative 3 - Property-wide Selective Harvest, and Alternative 4 - 63,000 acre No-harvest Public Reserve.

After reviewing and evaluating public comments on the Draft EIS in light of Federal and State permit issuance criteria, the wildlife agencies have determined that additional measures are appropriate to minimize and fully mitigate the impacts of take and to further reduce potential adverse effects. Additional mitigation includes enhanced measures for (1) sediment assessment; (2) road stormproofing; (3) road construction, reconstruction, and improvement; (4) road inspections; (5) wet weather road-use restrictions; (6) hillslope management; (7) riparian buffers, including riparian management zones for Class III streams; (8) enlarged marble murrelet conservation areas; (9) increased management objectives for northern spotted owl; (10) implementation, effectiveness, and trend monitoring; (11) third party HCP monitoring; and (12) expert advisory panel(s) for mass wasting and wildlife issues.

EPA supports the Headwaters Forest Acquisition, the habitat conservation planning process, and sustainable harvest of timber products. We commend the FWS, NMFS, and others for their dedication and extensive work in developing the HCP/SYP and EIS. This work has resulted in a proposed HCP/SYP which will result in significant improvements over existing private forest management and species protection efforts in the unique California North Coast region. We urge Pacific Lumber Company and their parent company, MAXXAM, to demonstrate leadership in sustainable resource management by accepting and implementing the lead agencies' modified HCP/SYP.

Our review of the Draft EIS identified key issues which needed to be addressed to ensure an environmentally beneficial project. These issues focused primarily on improvements needed in the aquatics section of the HCP for cumulative watershed effects, hillslope disturbances, mass wasting strategy procedures, riparian buffers, roads management, herbicides, and monitoring. Based upon these issues we classified the Draft EIS as category EO-2, Environmental Objections-Insufficient Information. The proposed additional mitigation measures, Appendix P HCP Operating Conservation Program, Appendix S Implementation Agreement, and the response to our Draft EIS comments address our earlier objections. We are especially pleased with the enhanced Class I, II and III riparian management zones, restricted harvest on mass wasting areas of concern prior to watershed analysis, expedited road stormproofing schedule, use of expert panels, wet weather road-use restrictions, watershed specific timber harvest plan/HCP checklists, and compliance, effectiveness and trend monitoring. The research/scientific approach to monitoring, as described in Appendix P, is commendable. The focus on determining and verifying the linkages between hillslope and forest management and instream conditions will benefit all resource managers within the Pacific Northwest. We also wish to acknowledge and support the decision to limit the activities covered by the Incidental Take Permits.

As stated in our Draft EIS comments, land within the Headwaters Project area includes portions of six watersheds which are either listed or proposed for listing as "water quality-limited" in accordance with Section 303(d) of the Clean Water Act. For each of these waterbodies, the North Coast Regional Water Quality Control Board (or in some specific cases EPA) will develop Total Maximum Daily Loads (TMDLs). TMDLs are quantitative assessments of the sources of pollutants and allocations of those pollutants which are established in order to reduce pollution to levels that achieve water quality standards. Thus, EPA has a strong interest in ensuring forest management practices as proposed in the HCP/SYP to meet Endangered Species Act and California Forest Practices Act requirements are consistent with future TMDL requirements. EPA also has a keen interest in the Headwaters Forest Acquisition and HCP/SYP because, as one of the first major HCP/SYPs to address listed fisheries, it may influence the direction in developing future HCP/SYPs for actions which could collectively result in significant environmental impacts.

EPA will track implementation of the HCP through our participation on watershed analysis and mass wasting review teams and review of high priority Timber Harvest Plans that may threaten aquatic resources. In addition, EPA will continue to ensure that Clean Water Act programs, such as Total Maximum Daily Loads, will be properly implemented regardless of the status of the HCP.

We appreciate the opportunity to comment on the FEIS and look forward to working with you to achieve an environmentally sound project. In the interest of providing additional technical assistance, we have enclosed comments on the FEIS and proposed HCP. Please send two copies of the Record of Decision, Biological Opinions, and Statement of Findings to this office at the same time they are officially released to the public. If you have any questions, please call me at (415) 744-1584.

Sincerely,



David J. Farrel
Chief, Federal Activities Office
Cross Media Division

Enclosures: Detailed comments

MI002803

Filename: Hwfeisl.wpd

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John Campbell, Pacific Lumber Company
Frank Bacik, Attorney for Pacific Lumber Company
Elk River Timber Company
Tom Stewart, Foster Wheeler

DETAILED COMMENTS

Aquatic Comments

- 1) **Cumulative Watershed Effects:** EPA supports the requirement to conduct distinct cumulative watershed effects (CWE) and disturbance index (DI) assessments as part of the watershed analysis process (App. P., Section F.3.b.1.). The development of both CWE and DI assessments should be subject to scientific peer review since the results of these assessments have significant implications for the level of timber management and watershed protection provided across the ownership. We believe setting the upper limit of the DI at 20% (App. P., Section F.3.d.3.); prior to calibrating the DI to account for roads, harvest activities, mass wasting events, and existing watershed conditions; is pre-mature. A DI of 20% may be too high or too low to effectively serve as an early warning signal for preventing cumulative effects within a watershed. We recommend DI thresholds be set following modification of the DI assessment to account for roads, harvest activities, and mass wasting events and calibration to known watershed conditions.
- 2) **Mass Wasting:** EPA supports the additional mitigation measure in the HCP to restrict harvesting activity on mass wasting areas of concern until these areas are scientifically assessed through the watershed analysis process. We applaud the establishment of a scientific panel to evaluate the definitions of high, very high and extreme mass wasting areas of concern (App. P. Section F.3.c.7.7). In addition, we encourage the use of the scientific panel to evaluate the criteria for determining whether mass wasting events are considered "significant" for aquatic resources (Section F.3.c.7.8).
- 3) **Riparian Management Zone Prescriptions:** EPA is pleased with the changes to the riparian management zones for Class I, II and III streams (App. P, Section F.3.d.1.). As a point of clarification, the post-analysis RMZ limits (Section F.3.b.2.7) should state that hillslope mass wasting avoidance prescriptions may supersede the Class I and II RMZ limits where Class I and II's are located within defined mass wasting areas of concern. In addition, the reference to the California Forest Practice Rules in the last bullet under the post-analysis minimum RMZ limits is confusing. We believe this reference should be replaced with the following less confusing statement: "The minimum prescriptions shall not be less than those required under the California Forest Practice Rules in effect at the time of post watershed analysis."
- 4) **Sedimentation from Roads, Landings and Skid trails:** EPA concurs with the increase in road miles to be assessed and storm-proofed within the time frames described in the HCP. In response to our concern regarding the assessment and control of sediment

sources other than those on the active road network, the FEIS and HCP refer to Pacific Watershed Associates protocols (July 1998 Draft HCP, Volume II, Part O with Attachments). We recommend the integration of these protocols into the current HCP to ensure that these protocols are followed. We also urge initiation of a dialogue on how to address the sediment sources from legacy roads and other areas not included in the active road network. Regarding wet weather operations, EPA recommends that rain gauges be located as close to the wet weather operation as possible or, at a minimum, within each hydrologic unit within which the operation/hauling is occurring.

5) Monitoring and compliance: The framework for compliance, effectiveness and trend monitoring and adaptive management appears to be a sound approach for this HCP (Section F.3.e.). This framework should integrate well with the expected monitoring element of the Van Duzen River/Yager Creek TMDL. We encourage PALCO to develop, in consultation with the Federal and State lead agencies, a Quality Assurance/Quality Control Plan (QA/QC Plan) for the monitoring program which will serve to articulate objectives, methodologies, data management and analysis. The HCP should commit to a schedule for developing such a QA/QC Plan. We recognize that this QA/QC Plan may be part of the Mitigation Monitoring and Reporting Program currently being refined. EPA also supports the use of a "HCP Monitor" (Section F. 13.) to independently evaluate the implementation of HCP provisions.

6) Linkage to Total Maximum Daily Loads (TMDLs): EPA and the Northcoast Regional Water Quality Control Board are currently developing TMDLs for the Yager Creek and Van Duzen River watersheds. Both watersheds contain substantial areas of PALCO ownership covered by this HCP/ITP. As part of the source assessment element of the TMDL, Pacific Watershed Associates is assessing the relative contributions from management-associated and natural sources of sediment. They are using a stratified random sampling scheme throughout the basin. This assessment will help verify whether or not the HCP mitigation measures for controlling erosion are indeed addressing the most significant, controllable sources. The HCP appears to align well with the developing TMDLs. The primary controllable sediment sources appear to be adequately identified in the HCP. These sediment source contributors include road-related activities and timber harvest on unstable areas and within riparian areas. In addition, the revised HCP monitoring strategy, which now includes compliance, effectiveness and trend monitoring, conforms to the anticipated approach for the TMDL monitoring strategy. However, as stated in item #6 above, additional clarification regarding quality assurance/quality control, parameters, and locations of the HCP monitoring program may be necessary. We look forward to continuing our work with other agencies, landowners, and PALCO to develop TMDLs and implementation plans, integrated with existing land management plans and HCPs, for the Yager Creek and Van Duzen River watersheds.

General Comments

- 1) We acknowledge the significant level of environmental protection provided by the enhanced riparian management zones, MMCAs, Headwaters Reserve and compliance, effectiveness, and trend monitoring. However, we remain uncomfortable with the precedent of permitting timber harvest at a level that exceeds growth for the first two decades (DEIS, pg. 3.9-42). We urge the lead agencies and PALCO to consider reduced harvest levels or limitations on clearcutting in those watersheds which are already over the cumulative effects thresholds (e.g., Freshwater Creek, Bear Creek). In addition, we urge monitoring of the proposed intensive management strategy to help validate assumptions regarding the ability of such management to achieve sufficient growth to ensure long-term sustained yields.
- 2) A high level of new roads are still being proposed, especially in Freshwater Creek which already has a high road density and is considered adversely affected by cumulative sediment effects. We urge either a reduction in new road miles or a no-net-gain in road density for those watersheds already impaired.
- 3) While we support the proposed HCP and additional mitigation measures, we remain concerned with the ability of the lead agencies and PALCO to fully implement all commitments as stated. To ensure smooth implementation of the HCP, we recommend development of a prioritized list of tasks and actions which can be used as a fallback strategy in case sufficient funds and resources are not fully funded in a given year.
- 4) Appendix P HCP Operating Conservation Program appears to allow harvest of northern spotted owl activity sites in excess of the management objective of maintenance of 108 activity sites per year (pg. 22). Although nest trees would be retained, the surrounding habitat would be lost. We recommend the FWS clearly describe in the Biological Opinion and Statement of Findings why the loss of these "excess" activity sites would not adversely affect recovery efforts for the northern spotted owl.
- 5) The description of riparian management zone prescriptions is a little confusing in the environmental consequences portion of the FEIS. We recognize this confusion is due in part to the very short time available for DEIS revisions. We commend the FWS, NMFS and other agencies for the product which was achieved despite the unreasonable time constraints. To ensure certainty and to eliminate any confusion, we recommend the development of a short concise list of all the management prescriptions and requirements which can be attached to the proposed THP checklist. It is understood that Appendix P may fulfill part of this function.

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